



11-12-2002

U.S. Patent & TMO/c/TM Mail Rcpt Dt. #01

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

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TRADEMARK

In the Matter of Registration No. 2,204,424
Registered on November 17, 1998.

STEVE BISCOS,

Petitioner,

vs.

PACIFIC CREST HOLDINGS, INC.

Registrant.

CANCELLATION NO. 32,302

REGISTRANTS ANSWER TO THE PETITION FOR CANCELLATION

Pacific Crest Holdings, the owner of the registration identified in the heading of this document, in response to the Second Amended Petition for Cancellation, dated September 24, 2001, instituting the *cancellation* proceeding, answers the petition as follows:

1. The Registrant admits the allegations of paragraphs 1, 2, and 4.
2. In response to the allegations of paragraphs 3 and 5 of the petition, the registrant is without knowledge or information sufficient to form a belief as to the truth of the averments set forth and based thereon denies each and every such averment.
3. In response to the allegations of paragraphs 6, 7, and 8 of the petition, the allegations are denied.

AFFIRMATIVE DEFENSES

4. The opposer has failed to allege grounds sufficient to establish its standing to maintain the present opposition.

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5. The opposer is guilty of laches in that opposer had actual and constructive notice of Registrant's use of the "Topz" mark in commerce at least as early as June 1998. Opposer did not protest or inform Registrant that it objected to the use of the "Topz" mark before filing the instant petition in July 2001. During that period of more than three years, opposer allowed Registrant to expand its use of the "Topz" mark. If Opposer was allowed to cancel the registration it would result in extreme prejudice to Registrant.

6. The opposer acquiesced to Registrant's use of the "Topz" mark in that opposer had actual and constructive notice of Registrant's use of the "Topz" mark in commerce at least as early as June 1998. Opposer did not protest or inform Registrant that it objected to the use of the "Topz" mark before filing the instant petition in July 2001. During that period of more than three years, opposer allowed Registrant to expand its use of the "Topz" mark. If Opposer was allowed to cancel the registration it would result in extreme prejudice to Registrant.

7. The opposer is guilty of unclean hands.

8. The opposer cannot show likelihood of confusion among the two marks because opposer's use of the mark is limited to a very small geographical area (Pasadena, California) and there are many examples of third parties using "Tops" as the name of restaurants throughout the United States. As a result of the fact that any trademark rights that opposer may have are very weak, and opposer cannot and will not be able to show any likelihood of confusion among the marks.

9. The opposer is not and has never used the "Tops" mark in interstate commerce and therefore would not be able to register the "Tops" mark.

RELIEF REQUESTED

Wherefore, the Registrant asks that this cancellation proceeding be dismissed.

Respectfully submitted,

PACIFIC CREST HOLDINGS, INC.

Date: November 4, 2002

By: 

Larry Zerner

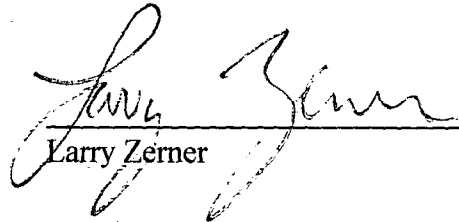
Attorney for Registrant

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CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the foregoing REGISTRANTS ANSWER TO THE PETITION FOR CANCELLATION upon Petitioner's counsel by depositing one copy thereof in the United States Mail with First Class postage affixed thereon on November 6, 2002 addressed as follows:

Edward R. Schwartz
Christie Parker & Hale LLP
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Pasadena CA 91105



Larry Zerner